

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

OPINION 18-01
(Issued April 30, 2018)

**PARTICIPATION IN RECORDED INTERVIEWS WITH NOT-FOR-PROFIT
EDUCATIONAL INSTITUTIONS**

ISSUE

May an Arizona judge participate in a recorded interview with a not-for-profit educational institute that he or she attended?

ANSWER

No, if the interview will be used for fund-raising purposes. Otherwise, yes, with qualifications.

FACTS

A judge has been asked to participate in a recorded interview about the judge's experience as a student at a not-for-profit Arizona college. The judge does not know the exact nature of the interview questions but anticipates being asked to discuss how the college played a role in the judge's professional development and career achievements. The judge will not wear a judicial robe during the interview, and the interview will not take place at the courthouse. The judge's judicial position, though, will presumably be discussed.

DISCUSSION

I. Applicable Code Provisions

Several provisions of the Arizona Code of Judicial Conduct ("Code") are relevant to this inquiry, including:

Rule 1.2. Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Rule 1.3. Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Rule 3.1. Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality or demean the judicial office;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Rule 3.7. Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) A judge may not directly solicit funds for an organization. However, subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

- (1) assisting such organization or entity in planning related to fund-raising, volunteering services or goods at fund-raising events, and participating in the management and investment of the organization's or entity's funds;
- (2) soliciting contributions for such an organization or entity, but only from members of the judge's family or from judges over whom the judge does not exercise supervisory or appellate authority;
- (3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;
- (4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may do so only if the event concerns the law, the legal system, or the administration of justice.

II. Analysis

This inquiry highlights the tension that can exist between the Code's exhortation that judges remain active members of and contributors to their communities, *see, e.g.*, Rule 3.1, cmt 1 ("[J]udges are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit"); Rule 3.1, cmt 2 ("Participation in both law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system."), and the Code's sometimes-rigorous restrictions on extra-judicial activities. The Code, though, imposes "rules of reason" that are to be interpreted with "due regard for all relevant circumstances." Code, "Scope."

The committee perceives no significant ethical impediments posed by Rule 1.2. There is a theoretical possibility that questions posed (or answers given) could run afoul of Rule 1.2's mandate that judges act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary. Generally speaking, however,

an interview that focuses on a judge's positive academic experiences is unlikely to prove problematic under Rule 1.2.

A more substantial question arises under Rule 1.3. Would a judge's participation in such an interview abuse the prestige of judicial office to advance the interests of a third party – here, the educational institution?

Judicial ethics committees from other jurisdictions have addressed similar questions, reaching divergent conclusions.¹ The California Judges Association, for example, has concluded it would be improper for a judge to appear in a video to be viewed by “potential students,” stating:

The request by a school to feature a judge in a video discussing the value of the education the judge received at the particular school to be shown to potential students would be a violation of [the rule prohibiting lending the prestige of judicial office to benefit others,] as the school's purpose is to encourage students to attend that school using the prestige of the judicial office and title.

California Judges Association, Judicial Ethics Committee, Opinion No. 72; *see also* Massachusetts Supreme Judicial Court Advisory Opinion 2017-02 (judge may not participate in university's video profile series featuring prominent alumni because doing so would abuse the prestige of judicial office); Supreme Court of Kansas Judicial Ethics Advisory Panel Opinion JE 159 (judge may not permit university to use his photograph in advertising campaign); Supreme Court of Wisconsin Judicial Conduct Advisory Committee Opinion 05-01 (university may not use judge's image, name, and title in advertising campaign).

Florida, on the other hand, has concluded that judges may permit educational institutions to feature them in advertising materials profiling successful alumni in an effort to inspire others to pursue higher education. *See* Florida Supreme Court Judicial Ethics Advisory Committee Opinion 97-28. Similarly, New York generally permits schools to use judges' names, photographs, and biographies in advertising campaigns for student recruitment. *See* New York Advisory Committee on Judicial Ethics, Opinion 02-21. The New York advisory committee reasoned that requiring a judge “to seek to bar his or her college or law school from pointing to the achievements of particular alumni/ae as reasons for considering enrollment” would “contravene the mandate that the Rules Governing Judicial Conduct are to be regarded as rules of reason.” *Id.*

¹ The committees have uniformly concluded, though, that judges may not permit their likeness or words to be used by educational institutions for fund-raising purposes.

Rule 1.3 prohibits “abuse” of the prestige of judicial office, not simply “use.” The Code does not define “abuse.” Common definitions include “a departure from legal or reasonable use,” *Black’s Law Dictionary* (9th ed. 2009) and “a corrupt practice or custom; improper or excessive use or treatment,” *Merriam-Webster Dictionary*, <http://merriamwebster.com/dictionary/abuse> (last visited March 22, 2018).

In several contexts, the Code permits judges to “use” the prestige of judicial office in extra-judicial activities. *See, e.g.*, Rule 1.3, cmt 2 (judges may write letters of recommendation using judicial letterhead in certain circumstances); Rule 3.7(A)(4) (judges may use judicial titles at fund-raising events concerning the law, the legal system, or the administration of justice); Rule 3.7(C)(2) (judges may endorse projects and programs related to the law, the legal system, and the administration of justice and “may actively support the need for funding of such projects and programs.”); Rule 3.7, cmt 4 (judge’s title or judicial office may be included on letterhead for educational, religious, charitable, fraternal, or civic organizations “if comparable designations are used for other persons.”). The Code implicitly deems such extra-judicial activities proper “uses” of the prestige of judicial office, as opposed to “abuses.”

If a judge is one of several graduates interviewed, the risk that the school is attempting to capitalize on the prestige of judicial office or that the judge’s interview will be perceived in that fashion is minimal. The inquiring judge will not wear a judicial robe, and the interview will not occur at the courthouse. Such factors are relevant in assessing whether the prestige of judicial office is being abused. Unless other participants are interviewed at their workplaces or wearing their professional garb – be it a construction hard-hat, medical scrubs, or a police uniform – a judge should not, through attire or location, be depicted as having any different or special status from other featured graduates.

The judge cannot solicit funds for the school. *See* Rule 3.7(A). Given that prohibition, the judge must take steps to ensure that what cannot be done directly is not achieved indirectly by others. *See* Rule 1.3 (judge may not “allow others” to abuse the prestige of judicial office for personal or economic reasons). As such, the judge should instruct the school that it may not use the interview as part of any fund-raising effort.

CONCLUSION

Interpreting Rule 1.3 as a “rule of reason,” focusing on “abuse” of the prestige of judicial office, and giving meaning to the Code’s encouragement of community involvement, the committee concludes that Arizona judges may participate in recorded interviews with not-for-profit educational institutions they attended, subject to the following qualifications:

1. The judge should inquire about the purpose of the interview and its contemplated use(s).
2. The judge should determine whether he or she is being singled out for participation based on his or her judicial position or whether other graduates who are not members of the judiciary will be included. Abuse of the prestige of judicial office is more likely if a judge is treated differently from other alumni.
3. The judge should instruct the school that the interview may not be used for any type of fund-raising activity. If the judge learns that this admonition has not been heeded, he or she should direct the school to cease using the recorded interview.